



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Oregon Army National Guard Danger Zone, Camp Rilea, Clatsop County, Oregon

AGENCY: U.S. Army Corps of Engineers, DoD

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is establishing a new danger zone in the waters adjacent to Camp Rilea located in Clatsop County, Oregon. The regulation prohibits any activity by the public within the danger zone during use of weapons training ranges. The new danger zone is necessary to ensure public safety and satisfy the Oregon National Guard operations requirements for small arms training.

DATES: Effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922 or Mr. Steve Gagnon, U.S. Army Corps of Engineers, Portland District, Regulatory Branch, at 503-808-4379.

SUPPLEMENTARY INFORMATION: In response to a request from the Oregon Army National Guard, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of

1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations at 33 CFR part 334 to establish a new danger zone. The danger zone will prohibit access to waters adjacent to Camp Rilea during use of weapons training ranges, thereby ensuring that no threat is posed to passing water traffic due to ricochet rounds.

The proposed rule was published in the May 2, 2012, issue of the Federal Register (77 FR 25952), and its regulations.gov docket number is COE-2011-0036. Three state agencies responded to the notice with comments. Most of the comments were regarding public access and notification methods. Oregon law created a recreation easement in 1967 guaranteeing access to the beaches for everyone. The commenting agencies expressed concerns that these closures would impinge on this recreational access, especially during periods of heavy recreational use such as clam harvesting activities. Oregon Parks and Recreation Department developed an interagency agreement with the Oregon Military Department detailing when closures can and cannot occur and procedures for those closures to ensure public safety. For example, the closures will not be scheduled during low tides most favorable for clam digging; there will be 15 minutes of cease fire during each hour of closure to allow passage by boats and beach goers through the restricted area; and Oregon Military Department will maintain a website to disseminate information about closures.

Oregon Department of Fish and Wildlife also had concerns about potential disturbance to sensitive wildlife species, including Steller sea lions, snowy plovers, and sea turtles. The use of the danger zone is not expected to increase impacts to any wildlife. A danger zone is a buffer established around a firing range for unexpected errant rounds or explosive fragments. In addition, establishing a buffer is intended to

increase public safety during training on the firing ranges, but is not granting permission for the National Guard to perform training. Increased activity due to the danger zone determination would be limited to hanging warning flags and posting guards on the beach. This type of activity is entirely consistent with existing activity on the beach and would not increase impacts to sensitive wildlife species in the area.

Procedural Requirements

a. Review Under Executive Order 12866. This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act. This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The danger zone is necessary to protect public safety and satisfy the Oregon National Guard's operations requirements for small arms training. Small entities can utilize navigable waters in the danger zone when the danger zone is not activated by the Oregon National Guard. When the danger zone is activated, small entities can utilize navigable waters outside of the danger zone. After considering the economic impacts of this danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review under the National Environmental Policy Act. The Corps has determined that this regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared and may be reviewed at the District office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Act. This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private section mandate and it is not subject to the requirements of either section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger Zones, Marine Safety, Navigation (water), Restricted Areas, Waterways.

For the reasons stated in the preamble, the Corps amends 33 CFR Part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add §334.1175 to read as follows:

§ 334.1175 Pacific Ocean, at Camp Rilea, Clatsop County, Oregon; Danger Zone.

(a) *The danger zone.* The danger zone shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, within an area bounded as follows: beginning at latitude 46° 09' 00.32" N, longitude 123° 57' 52.57" W; thence to latitude

46° 09' 00.32" N, longitude 124° 01' 03.92" W; thence to latitude 46° 05' 25.38" N, longitude 124° 01' 03.92" W; thence to latitude 46° 05' 25.38" N, longitude 123° 56' 23.19" W. The datum for these coordinates is WGS84.

(b) *The regulations.* (1) No person or vessel shall enter or remain in the danger zone when restrictions are in force during weapons range training activities. At all other times, nothing in this regulation prohibits any lawful uses of this area.

(2) A schedule for proposed closures of the danger zone will be furnished to the Coast Guard, Astoria Command Center one week in advance of range training activities to provide local notice to mariners. Changes to the schedule made less than one week in advance of the event will be transmitted to the Command Center on the day the change is made.

(3) At least 30 minutes prior to restricting navigation in the danger zone, red flags will be raised on wooden poles immediately next to the beach at the north and south boundaries of Camp Rilea. The red flags will remain flying while the ranges are in use. During night weapons training activities, red lights will be substituted for the flags. Closure announcements will be broadcast over marine VHF Channel 16/19. When range training activities are completed, the red flags will be removed and an announcement made over marine VHF Channel 16/19 that restrictions are lifted.

(4) When restrictions are in force, Camp Rilea will visually monitor the danger zone using radar and guards, equipped with binoculars and two-way radios, posted on the beach near the north and south boundaries of the Camp. If a vessel is detected in the danger zone, a cease fire will be called on all active weapons ranges and Camp Rilea will

attempt to contact the vessel using marine VHF radio. Cease fire will be maintained until the vessel leaves the danger zone.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Camp Rilea, Oregon and such agencies as he/she may designate.

Dated: February 18, 2015.

Edward E. Belk, Jr., P.E.

Chief, Operations and Regulatory Division

Directorate of Civil Works

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